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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,446	11/14/2003	T. Douglas Moser	TDMF121764	9381

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EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/714,446

Applicant(s)

MOSER ET AL.

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11-17, 19-25 and 41-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-17, 19-25 and 41-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brick et al taken together with Oplinger et al, Applicant's own admission, and either one of Singh et al and Ramanthan et al.

Brick et al discloses a predetermined interest in the particular size of Cicer bean desired (i.e. 54-50 seeds /oz), harvesting same by combine separating seed from plant residue, cleaning same by using air screen cleaners, seed conditioning (used for processing dry beans, i.e. dehydrating same), and packaging the final beans.

The claims further call for harvesting of green Cicer beans, specifically. Although Brick et al discloses the treatment of the traditional format of Garbanzo-type Cicer beans, it is known to harvest and depod, specifically, green Cicer beans by Applicant's own admission (pages 2 and 3). Oplinger et al further discloses the commercial consumption of Chickpea as a "green vegetable" (albeit less common), thus suggesting the alternative of green Chickpea harvesting. In addition, Singh et al and Ramanthan et al both further teach the harvesting of a green type of Cicer bean. It would have been

obvious to one having ordinary skill in the art at the time of the invention to have treated green Cicer beans by the traditional method of treating Cicer beans in general, as disclosed by Brick et al as a matter of preference.

Although it appears that Brick et al employs seed conditioning for the purpose of preparing a dried bean product (as set forth above), if it is shown that this is not the case, the following should be noted. It is well known to employ such step in treating Cicer beans as taught, for example, by Oplinger et al with respect to Chickpeas. It would have been further obvious to one having ordinary skill in the art at the time of the invention to have dried the beans as a preservative measure to prevent insect and/or disease outbreaks during subsequent storage.

The claims further call for blanching the beans as a measure of preserving same. Blanching is a well known preserving methods with regard to Cicer bean treatment as taught, for example, by either one of Singh et al and Ramanathan et al, and, it would have been obvious to have incorporated such measure in conjunction with or as an alternative to the drying treatment set forth in Brick et al and/or Oplinger et al. With regard to the further claims determination of the particular time and temperature most effective in preserving the beans as it pertains to reducing enzyme activity, such would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at such amounts through routine experimental optimization.

It should be noted that the claims call for said green Cicer beans to be commercial processed. Brick et al further discloses commercial production and marketing of Cicer beans generally (page 6 and page 3 wherein the latter suggests

commercial appeal of certain varieties). Although, not specifically setting forth that green Cicer beans are being sold, it should be noted that any production for money is considered a commercial production whether it is done in a large factory setting or sold out of someone's basement. Since any legal product may be bought or sold, it would have been further obvious to have commercially produced same for potential profit as a matter of preference well known in the art. Oplinger et al discloses a suggestion that there exists a desire of the green Cicer beans. More specifically, by setting forth that "greenish....seeds are generally unacceptable," Oplinger et al is also suggesting that same **are also** acceptable to some, albeit a smaller number of consumers. In other words, the term "generally" does not put an absolute cap on acceptability of green seeds. Moreover, Oplinger discloses consumption of Cicer beans in **green** form (i.e. as a green vegetable; page 1).

3. Claims 14-16, 20-23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 4 further in view of Wood.

The claims further call for depodding the Cicer beans. Although it is considered likely that Brick et al depods said beans, it should be noted that Oplinger et al employs a screen size in separating beans by size, and since Oplinger et al relates to treatment of different beans including Desi-type which typically grow in pairs within pods, the separating treatment of Oplinger et al implies that the beans have been depodded in order to separate the seeds themselves by size. It would have been obvious to one having ordinary skill in the art at the time of the invention to have depodded the beans, in particular, out of necessity with respect to Oplinger et al in order to facilitate size

separation of individual beans.

The claims further call for employing a vibrating screen in removing depodded green Cicer beans (which would relate to size) from other harvested material. Vibrating screens for the purpose of size separation of bean materials is well known as taught, for example, by Wood (col. 3, lines 5-32). It would have been further obvious to have employed such conventional separation devices as a matter of preference depending on availability, cost, space allotted, etc.

Brick et al is silent regarding the amount of moisture content in the final bean product. However, Oplinger et al further teaches seed conditioning by way of drying said beans to 10-12% moisture, a preservative measure, before packaging. It would have been further obvious to one having ordinary skill in the art at the time of the invention to have dried the beans such extent to prevent insect and/or disease outbreaks during subsequent storage as further taught by Oplinger et al.

4. Claims 7 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 4 further in view of Rockland et al.

The claims further call for freezing the beans as a measure of preserving same. Freezing is a well known preserving methods with regard to Cicer bean treatment as taught, for example, by Rockland et al, and, it would have been obvious to have incorporated such measures in conjunction with or as an alternative to the drying treatment set forth in Brick et al and/or Oplinger et al.

5. Claims 12, 13, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the claims as set forth in either one of paragraph 4 or 5 further in view of Gupta.

The claims further call for collecting the green Cicer beans in water and removing any material floating on the top. However, such floatation step of separating desired beans from unwanted material such as bean pods is well known as taught, for example, by Gupta (e.g. Abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such separation step as a matter of preference in providing a more isolated, quality product.

Claim 13 further calls for repeating process steps. It would have been further obvious to have repeated steps to increase the degree of resulting effect desired with respect to each step.

6. Claims 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 4 in view of Wood and Burling et al.

The claims further call for employing a vibrating screen with a predetermined vibration rate in removing green Cicer beans (which would relate to size) from other harvested material. Vibrating screens for the purpose of size separation of bean materials is well known as taught, for example, by Wood (col. 3, lines 5-32). It would have been further obvious to have employed such conventional separation devices as a matter of preference depending on availability, cost, space allotted, etc. It is expected that the vibrating rate was predetermined as a standardized rate among all of the commercial available vibrating screens with respect to Wood. If it is shown that the rate

for vibrating screens produced in view of Wood would not have been predetermined, it would have been further obvious to have provided a single rate that is the same in all the vibrating screens of Wood to provide a uniform commercial product.

The claims further call for said screen to be adjustable by a plurality of spaced louvers wherein said plurality of louvers are adjusted based on the relative sizes of beans to be processed. Burling et al teaches a system of separating by size bean material in a device wherein screen plates may be adjusted in width of openings to facilitate a desired separation (e.g. col. 2, lines 8-22). Although Burling et al does not specifically refer to louvers for doing same, the particular apparatus of Burling et al provides the same method action. It would have been further obvious to have incorporated such step to provide more controlled separation options by size.

Request for Information

7. Again, Applicants are requested to provide any additional prior art information they may possess or know about related to the processing of Cicer beans in general, particularly, the conventional steps employed in harvesting, cleaning, and Cicer bean separation. It is difficult to discern in the instant Specification what differences from conventional Cicer production are employed or required in view of the treatment of, specifically, green Cicer bean. To date, Applicant has not responded to this request.

Response to Arguments

8. Applicant's arguments filed 4/7/06 have been fully considered but they are not persuasive.

Applicant argues that Brick et al teaches directly away from the production of green Cicer beans. Examiner disagrees. Although not preferred, Brick et al does suggest that green Cicer beans have been employed in such processing ("plants that aregreen at the time of cutting will produce dark, discolored and immature green seed"). In addition, Brick et al does not exclude same altogether by setting forth harvested beans "should have minimal mechanical damage and light cream color." By using the word "should", Brick et al is leaving the door open to a tolerated unspecified amount of green beans. Applicant further argues as evidence that Brick et al teaches away from the use of green dry Cicer beans since same have been dried prior to harvesting. However, it should be first noted that the claims when broadly considered do not specify whether the "green" refers to the color of the bean or the time of harvesting (as in a freshly harvested, green product). In other words, the claims do not provide such distinction as to the meaning of "green" as the color of same or simply the raw being of same just after harvesting. Although Brick et al has been considered for what it teaches with regard to green *colored* beans, it also is asserted that Brick et al discloses treatment of beans that have been harvested wherein without further processing after harvesting would be considered "green" as in "raw". Clearly, whether the beans have been intentionally dried or dried by drought, same are also considered "green" in the sense that same are raw or fresh following harvesting.

Applicant argues that Oplinger et al teaches away from the processing of green beans and reproduces as evidence a passage on page 5 in said reference. Furthermore, Applicant argues that by drying the beans before harvest, same will not be

green beans. However, in this cited passage, Oplinger et al falls short of stating outright that only green beans are acceptable. Oplinger et al actually recites that “greenish....seeds are generally unacceptable” falling short of excluding all green seeds from being produced. Clearly, although not preferred, such passage suggests an opening for the desirability or at least tolerance of green beans to some consumers. Furthermore, Oplinger et al discloses the consumption of Cicer beans as a green vegetable (page 1). In view of same, it cannot be fairly set forth that Oplinger et al teaches “directly away” from the processing of Cicer beans that are green.

Applicant further argues that the remaining references are not directed to commercial production of green Cicer beans without going into much detail and further argues lack of motivation for combining each reference. However, each of these secondary references were applied for teaching certain limitations of the instant claims and not necessarily all those limitation “covered” by the primary reference (Brick et al). These references were applied for what they would “bring to the table” in the art to one having ordinary skill in the art. Motivation for combining these teachings with the primary reference have been set forth in the rejections as set forth above.

Applicant argues with respect to Brick et al and Oplinger et al there is no reasonable expectation of success to commercially produce green Cicer beans. However, success is subjective. If greenish seeds (whether considered in the meaning of the “raw freshly harvested form” or in terms of its color) are acceptable to even a few (as indicated, for example, in Oplinger et al, i.e. green seeds are considered only

“generally unacceptable”), it is expected that they may be commercially produced for said few.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
June 14, 2006

A handwritten signature consisting of several overlapping loops, followed by the date "6/14/06" written in a similar cursive style.